

IN THE COURT OF APPEALS OF IOWA

No. 1-728 / 11-1254
Filed October 5, 2011

**IN THE INTEREST OF N.N., Q.N., A.P., and J.P.,
Minor Children,**

T.P., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Jami Hagemeyer, Des Moines, for appellant mother.

Karen Taylor, Des Moines, for father of Q.N.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, John P. Sarcone, County Attorney, and Faye Ann Jenkins, Assistant County Attorney, for appellee State.

Charles Fuson of the Youth Law Center, Des Moines, for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

A mother appeals from the order terminating her parental rights to her four children: eight, seven, and two years of age.¹ She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the children's best interests. Considering the mother's history of missing drug screening, mental instability, inability to safely parent the children, and lack of progress toward meeting case plan requirements, we affirm termination of her parental rights. We further conclude termination is in the best interests of the children. We therefore affirm the decision of the juvenile court.

I. Background Facts and Proceedings.

This family came to the attention of the Iowa Department of Human Services (DHS) in March 2009, after twins A.P. and J.P. tested positive for marijuana at birth. The mother, twenty-three years old, admitted to using marijuana, but denied it affected her ability to parent. The mother began receiving voluntary services, in which she "minimally participated" and had "little follow through," but the children remained in her care. In May 2009, unbeknownst to DHS, the mother was arrested for theft. In September 2009, the mother pled guilty to theft and was sentenced to jail for thirty days. The mother has a lengthy history of theft-related convictions, and had served at least two prior prison sentences when N.N. and Q.N. were younger. Mittimus was delayed for one week to enable the mother to make arrangements for the children's care while she was in jail. By the end of the week, the mother had failed or refused to

¹ The youngest children are twins. The fathers of the eight-year-old and two two-year-old twins are unknown, and their parental rights were also terminated. They do not appeal.

assist DHS in planning for the children. On September 8, 2009, the juvenile court entered a temporary removal order, placing all four children with Earl, the father of Q.N.² Earl also has two other children from another relationship. According to the mother, she and Earl were married at one time, but she did not change her last name.

On November 4, 2009, the court entered an order observing that Earl was “overwhelmed in providing care for the four children.” The court ordered that Q.N. (Earl’s biological child) remain in Earl’s custody, under DHS supervision.³ The court transferred custody of N.N., A.P., and J.P. to DHS for foster care placement together with the same foster family. The court noted the mother had been released from jail and was being provided reasonable services, including mental health⁴ and substance abuse evaluations and treatment, drug screens, transportation, probation, family team meetings, and parent partner. But the court determined it would be “contrary to the welfare of these children to return to the mother’s care as she, since being released from jail, has not accessed services to the extent their safety can be ensured.” Following an uncontested hearing, the children were adjudicated in need of assistance (CINA) on November 12, 2009.

A review hearing took place on February 4, 2010. The court’s main concern was the mother’s failure to participate in mental health and substance abuse treatment. The mother had also missed drug screens in December,

² Paternity of the other three children was never established, as the mother provided no information to DHS as to potential fathers of the children.

³ Earl’s other two children, Q.N.’s half-siblings, also lived with Earl.

⁴ The record indicates the mother may have bi-polar disorder.

January, and February, despite being informed that missed screens were considered positive. Her caseworker observed that she was “fighting the system” and refused to take responsibility for the fact that the twins were born positive for marijuana. The mother believed her admitted past drug usage should be excused “without any verification” of her present alleged sobriety. The mother refused to accept parenting advice and guidance from caseworkers, and exhibited volatile, defensive, and inappropriate behavior. Caseworkers attributed some of the mother’s behavior to still undiagnosed mental health concerns, but the mother had not completed a mental health evaluation and diagnosis, so the caseworkers could not provide the mother with assistance to resolve those issues, if any. The mother did attend some counseling, and her counselor recommended she participate in dual diagnosis treatment.

Caseworkers also worried about the mother’s behavior, tone, and overall presence with the children. Further, the mother often missed visitation, but excused her behavior by stating that she still called the children on the phone when she missed. The mother was unable to identify how cancelling visitation impacted the children. The mother promised the children, particularly the oldest child, N.N., that they would be living with her again very soon, and caseworkers worried these promises made N.N. even more upset and disappointed when the mother missed visitation.

Another review hearing took place on May 4, 2010. The court observed the mother had not addressed her mental health needs, or had not done so sufficiently, as she had only recently begun attending treatment at Broadlawns. To her credit, the mother had obtained housing in a spacious duplex and had

some furniture. The mother admitted that her neighbor was a methamphetamine user. The caseworker also smelled marijuana coming from the neighbor's home on multiple occasions, but the mother alleged the smell was not a "trigger" for her to use. The mother missed several more drug screens during this time period. However, the court provided for more extensive visitation, and moved visitation to semi-supervised. During visits, the mother would direct the older children to be "in charge" of the younger twins, and warned that if anything happened to the twins, the older children "would get it."

Thereafter, the court became aware of three police contacts with the mother, two of which involved Q.N.'s father, Earl. A police report dated April 27, 2010, alleged the mother was a victim of a stabbing that occurred outside her home during a drug deal. Apparently, the mother's sister was selling "fake crack" out of the home, and after one of the buyers discovered the crack was fake, she came back and stabbed the mother. The mother did not receive medical treatment for her injury.

The other police reports alleged the mother was the victim of domestic assaults perpetrated by Earl on May 11 and May 17, 2010. At that time, the mother referred to Earl as her "ex-husband," and she was involved in a different relationship with a woman. Disputes occurred as a result of Earl's anger about the mother's new relationship. The mother's girlfriend was also involved in one of the disputes, and Earl pushed the girlfriend's head through the wall. The girlfriend received medical attention, but was not seriously injured. On May 20, 2010, the court entered an order removing Q.N. from Earl's custody and placing him in the same foster home as his half-siblings. Visitation for both parents was

changed to fully supervised, in a professional setting, due to concerns about the safety of the mother's home. Thereafter, the court set forth a graduated visitation schedule with an eye toward reunification.

On August 27, 2010, the court granted a three-month extension order pursuant to Iowa Code section 232.104 (2009) in order "to try and give more time for reunification." The court set forth seven specific conditions and expected changes that were to occur prior to reunification. The court ordered Earl to have increased unsupervised visits with Q.N. and observed that the permanency goal for Q.N. was reunification with Earl. The permanency goal for N.N., A.P., and J.P. was reunification with the mother.

A permanency/review hearing took place on November 10, 2010. Custody of Q.N. was transferred back to Earl. The other three children remained in foster care, due to the mother's "lack of stability and advancement of parenting/safety skills." Caseworkers observed that "[t]he overall problem with the mother is that she shows absolutely no insight into how her poor lifestyle choices impact her children." The court also observed that the mother "continues to fall short with regards to visitation and cooperation with professionals," and "it is at best fair to say that the mother [is] nominally engaged in therapy." Caseworkers noted that the mother appeared to be using her gas cards "for reasons other than compliance with services offered." The mother continued to miss visitation and was often late and unprepared for visits she kept. The mother's behavior with caseworkers also remained volatile and defensive.

Around this time, the mother began to be unreliable in providing contact information, and DHS was given authority to sign releases for the children. The

mother had moved “at least eight times” in the past two years. Caseworkers were unable to verify the date of the mother’s last treatment at Broadlawns. The court observed that the mother “disengaged from services” in winter 2011. The mother last saw the children on January 20, 2011. In particular, N.N. was extremely upset and disappointed that the mother stopped attending visitations. The Department of Corrections considered the mother to be in violation of her probation due to her lack of follow through with its requirements.

On March 7, 2011, the State filed its petition to terminate parental rights of the mother as to all children. Several days later, a warrant was issued for the mother’s arrest for an alleged burglary that had occurred on March 4, 2011. The record also indicates the mother may have taken part in a theft that occurred in December 2010, and may be involved in a fraud investigation.

A combined permanency/termination hearing took place on March 28, 2011.⁵ The State, guardian ad litem, and DHS caseworker unanimously recommended termination of the mother’s parental rights. The guardian ad litem also agreed with the State’s recommendation that Q.N.’s case be closed and permanency established with Earl. On July 25, 2011, the juvenile court entered its order terminating the mother’s parental rights pursuant to Iowa Code sections

⁵ The mother did not appear, but the record is clear the mother received notice of the date and time of the hearing. The mother’s attorney moved to withdraw, stating she had not had contact with the mother since February 16, 2011. (The court file also includes an application to withdraw, filed by the mother’s attorney, indicating the attorney did not have personal contact with the mother between February and March 2011, which rendered the attorney unable to “zealously advocate on behalf of her client due to the lack of contact.”) The court denied the motion to withdraw.

232.116(1)(b), (d), (e) as to N.N., A.P., and J.P.,⁶ and 232.116(1)(d) as to Q.N. The court ordered permanency of Q.N. with Earl. The mother now appeals.

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

⁶ The court also terminated the parental rights of any unknown putative fathers of these children pursuant to Iowa Code sections 232.116(1)(b) and (e).

A. Grounds for Termination.

1. *Clear and convincing evidence.* We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). In order to terminate under section 232.116(1)(d), the State was required to prove by clear and convincing evidence the following:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

The mother disputes both elements were proved. First, she contends “the children were previously adjudicated . . . after a finding that the mother could not properly supervise the children due to a short period of incarceration at the Polk County Jail” and notes “[t]he children have not suffered from physical abuse or neglect.” Further, the mother argues “[t]he court clearly erred when ruling the children could not be returned to the mother.”

We conclude the grounds for termination pursuant to section 232.116.1(d) have been proved. True, the children were adjudicated CINA and removed from the mother when she entered the Polk County Jail. However, the mother’s jail sentence was a direct result of her actions and choices while the children were in her care. The mother was arrested for theft in May 2009, and has a lengthy criminal record for theft-related convictions, including at least two other periods of incarceration. In addition, the mother’s drug usage and ability to provide a

reasonable degree of care in supervising the children were issues before the court at the time of adjudication. Clear and convincing evidence exists to support the determination that the children were adjudicated after finding the children to have been neglected as the result of the acts or omissions of the mother. See Iowa Code § 232.116(1)(d)(1); *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993) (observing that a parent's incarceration cannot be justification for lack of relationship with a child, particularly when "the incarceration results from a lifestyle that is chosen in preference to, and at the expense of, a relationship with a child.").

Clear and convincing evidence also supports the court's determination that the circumstances leading to adjudication continued to exist despite the offer or receipt of services. See Iowa Code § 232.116(1)(d)(2). The mother has made little, if any, progress toward reunification since the children's removal in September 2009, despite the court's allowance of a three-month extension. The mother has been involved in three violent altercations, one occurring during a drug deal taking place in her home, and the other two occurring during domestic altercations with Q.N.'s father. We decline to place blame on the mother where she has been victimized, but where there are three altercations in a short period of time, the critical question becomes whether she can provide a safe environment for the children. We acknowledge the mother has submitted negative drug screens throughout these proceedings. However, she also missed a number of screens, despite being informed missed screens would be considered positive. The mother chose not to consistently attend or complete substance abuse and mental health evaluations and treatment. Accordingly, the

mother has not addressed those issues, despite the court's repeated admonitions to do so. The mother missed scheduled visitations.

Significantly, the mother did not participate in services in winter 2010/2011, and did not have contact with the children after January 2011. She did not have contact her attorney after February 2011. At the time of termination, the mother had an arrest warrant out for theft and probation violations. Under those circumstances, it is not reasonable for the mother to argue the children could be returned to her care without suffering the same types of adjudicatory harm that caused them to be adjudicated in 2009. It is clear the mother is not a safe and appropriate placement for the children, and the children cannot be returned to her care. We find clear and convincing evidence that grounds for termination exist under section 232.116(1)(d).

2. *Further extension not warranted.* The mother argues the juvenile court should have granted a six-month extension under section 232.111(2)(b).⁷ That provision authorizes the State to not file a petition for termination of parental rights if there is "a compelling reason for determining that filing the petition would not be in the best interest of the child." See Iowa Code § 232.111(2)(b). The mother concedes the court already allowed an extension of time at the August 27, 2010 permanency hearing. At that time, the court set forth seven specific conditions and changes that were expected of her, including: "fully engage in therapy, substance abuse and mental health; . . . neither parent have

⁷ Alternatively, the mother contends the court should have granted an extension under section 232.116(3)(a), which permits the court not to terminate if "[a] relative has legal custody of the child." Although the mother does not articulate such, this argument would pertain only to Q.N., and will be addressed below.

probation violation; . . . compliance with FSRP; no missed visitations, parents on time.” It is clear the mother did not meet these expectations. Indeed, at the time of termination, the mother had not complied with therapy requirements, she had missed visitations, and there was a warrant out for her arrest following a probation violation. We do not believe the juvenile court erred in not further extending the time the children waited for their mother to be able to parent them safely. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (noting “the crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems” (internal citation omitted)); *In re T.D.H.*, 344 N.W.2d 268, 269 (Iowa Ct. App. 1983) (observing the juvenile court may look at a parent’s past performance in determining whether to grant a continuance of the termination hearing).

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining best interests, this court’s primary considerations are “the child’s safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child.” *Id.* Taking these factors into account, we conclude the child’s best interests require termination of the father’s and mother’s parental rights.

The mother argues termination of her parental rights is not in the best interests of the children. We disagree. The mother has had nearly two years to address her issues. The juvenile court considered evidence from the caseworker

and the guardian ad litem that the children's interests are best served by termination of the mother's parental rights. The children are not safe in the mother's care, and the mother is not able to provide for their long-term nurturing and growth. It would be a detriment to the children's physical, mental, and emotional conditions to maintain this parent-child relationship.

C. Exceptions or Factors against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary, including the presence of evidence that "a relative has legal custody of the child," or that "the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." See Iowa Code § 232.116(3)(a), (c). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

In its ruling, the juvenile court concluded that, under the facts of this case, the fact Q.N.'s father, Earl, has custody should not affect resolution of the mother's parental rights. Specifically, the court noted the instances of domestic violence between the mother and Earl in determining it was in Q.N.'s best interests that the mother's parental rights be terminated. Caseworkers have described the mother's relationship with Earl as "toxic," and the record supports such finding. Q.N. is in a safe and stable placement with Earl, and as the past

has shown, that safety is in jeopardy if the mother and Earl are in contact with one another. The guardian ad litem and the caseworker agreed with the court's finding as to this issue.

It is clear that a bond does exist between the mother and the children, and in particular, between the mother and N.N., who was eight-years-old at the time of termination. However, that bond has suffered and undoubtedly lessened considering the time N.N. and the other children have spent out of the mother's care; the mother's inconsistency in attending visits; and time she has spent in jail. We also note that the caseworker testified the children are bonded to each other and their foster family. Under these circumstances, we cannot maintain a relationship where there exists only a possibility the mother will become a responsible parent sometime in the unknown future.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the children's best interests pursuant to 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother's parental rights.

AFFIRMED.